

demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(f) EXCEPTIONS.—(1) This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) This section shall not apply to any disclosure made by an employee of a contractor, subcontractor, grantee, or subgrantee of an element of the intelligence community if such disclosure—

(A) relates to an activity of an element of the intelligence community; or

(B) was discovered during contract, subcontract, grantee, or subgrantee services provided to an element of the intelligence community.

(g) DEFINITIONS.—In this section:

(1) The term “abuse of authority” means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract or grant of such agency.

(2) The term “Inspector General” means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts or grants awarded for or on behalf of, the executive agency concerned.

(h) CONSTRUCTION.—Nothing in this section, or the amendments made by this section,¹ shall be construed to provide any rights to disclose classified information not otherwise provided by law.

(Added Pub. L. 112-239, div. A, title VIII, §828(a)(1), Jan. 2, 2013, 126 Stat. 1837; amended Pub. L. 113-66, div. A, title X, §1091(e), Dec. 26, 2013, 127 Stat. 876; Pub. L. 114-261, §1(a)(2), (3)(A), Dec. 14, 2016, 130 Stat. 1362; Pub. L. 116-260, div. U, title VIII, §801, Dec. 27, 2020, 134 Stat. 2297.)

Editorial Notes

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (g)(2), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2020—Subsec. (a)(2)(G). Pub. L. 116-260, §801(1), substituted “grantee, or subgrantee” for “or grantee”.

Subsec. (a)(3)(A). Pub. L. 116-260, §801(2), substituted “contractor, subcontractor, grantee, or subgrantee” for “contractor, subcontractor, or grantee”.

Subsec. (b)(1). Pub. L. 116-260, §801(3), substituted “contractor, subcontractor, grantee, or subgrantee” for “contractor or grantee”.

Subsec. (c). Pub. L. 116-260, §801(4), substituted “contractor, subcontractor, grantee, or subgrantee” for “contractor or grantee” wherever appearing.

Subsec. (d). Pub. L. 116-260, §801(5), substituted “grantees, and subgrantees” for “and grantees”.

Subsec. (f). Pub. L. 116-260, §801(6), substituted “grantee, or subgrantee” for “or grantee” in two places.

¹ So in original.

2016—Pub. L. 114-261, §1(a)(3)(A)(i), substituted “Enhancement” for “Pilot program for enhancement” in section catchline.

Subsec. (a)(1). Pub. L. 114-261, §1(a)(2), substituted “grantee, or subgrantee or personal services contractor” for “or grantee”.

Subsec. (i). Pub. L. 114-261, §1(a)(3)(A)(ii), struck out subsec. (i). Text read as follows: “This section shall be in effect for the four-year period beginning on the date of that is 180 days after the date the enactment of this section.”

2013—Subsec. (i). Pub. L. 113-66 inserted “that is 180 days after the date” before “the enactment”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title VIII, §828(b), Jan. 2, 2013, 126 Stat. 1840, provided that:

“(1) IN GENERAL.—The amendments made by subsection (a) [enacting this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 2, 2013], and shall, during the period section 4712 of title 41, United States Code, as added by such subsection, is in effect, apply to—

“(A) all contracts and grants awarded on or after such date;

“(B) all task orders entered on or after such date pursuant to contracts awarded before, on, or after such date; and

“(C) all contracts awarded before such date that are modified to include a contract clause providing for the applicability of such amendments.

“(2) REVISION OF FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to implement the requirements arising under the amendments made by this section [enacting this section and amending sections 4310 and 4705 of this title].

“(3) INCLUSION OF CONTRACT CLAUSE IN CONTRACTS AWARDED BEFORE EFFECTIVE DATE.—At the time of any major modification to a contract that was awarded before the date that is 180 days after the date of the enactment of this Act [Jan. 2, 2013], the head of the contracting agency shall make best efforts to include in the contract a contract clause providing for the applicability of the amendments made by this section to the contract.”

§ 4713. Authorities relating to mitigating supply chain risks in the procurement of covered articles

(a) AUTHORITY.—Subject to subsection (b), the head of an executive agency may carry out a covered procurement action.

(b) DETERMINATION AND NOTIFICATION.—Except as authorized by subsection (c) to address an urgent national security interest, the head of an executive agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation, in unclassified or classified form, from the chief acquisition officer and the chief information officer of the agency, or officials performing similar functions in the case of executive agencies that do not have such officials, which includes a review of any risk assessment made available by the executive agency identified under section 1323(a)(3) of this title, that there is a significant supply chain risk in a covered procurement;

(2) providing notice of the joint recommendation described in paragraph (1) to any source named in the joint recommendation advising—

(A) that a recommendation is being considered or has been obtained;

(B) to the extent consistent with the national security and law enforcement interests, of information that forms the basis for the recommendation;

(C) that, within 30 days after receipt of the notice, the source may submit information and argument in opposition to the recommendation; and

(D) of the procedures governing the consideration of the submission and the possible exercise of the authority provided in subsection (a);

(3) making a determination in writing, in unclassified or classified form, after considering any information submitted by a source under paragraph (2) and in consultation with the chief information security officer of the agency, that—

(A) use of the authority under subsection (a) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) the use of such authorities will apply to a single covered procurement or a class of covered procurements, and otherwise specifies the scope of the determination; and

(4) providing a classified or unclassified notice of the determination made under paragraph (3) to the appropriate congressional committees and leadership that includes—

(A) the joint recommendation described in paragraph (1);

(B) a summary of any risk assessment reviewed in support of the joint recommendation required by paragraph (1); and

(C) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why such measures were not reasonably available to reduce supply chain risk.

(c) PROCEDURES TO ADDRESS URGENT NATIONAL SECURITY INTERESTS.—In any case in which the head of an executive agency determines that an urgent national security interest requires the immediate exercise of the authority provided in subsection (a), the head of the agency—

(1) may, to the extent necessary to address such national security interest, and subject to the conditions in paragraph (2)—

(A) temporarily delay the notice required by subsection (b)(2);

(B) make the determination required by subsection (b)(3), regardless of whether the notice required by subsection (b)(2) has been provided or whether the notified source has submitted any information in response to such notice;

(C) temporarily delay the notice required by subsection (b)(4); and

(D) exercise the authority provided in subsection (a) in accordance with such determination within 60 calendar days after the day the determination is made; and

(2) shall take actions necessary to comply with all requirements of subsection (b) as soon

as practicable after addressing the urgent national security interest, including—

(A) providing the notice required by subsection (b)(2);

(B) promptly considering any information submitted by the source in response to such notice, and making any appropriate modifications to the determination based on such information;

(C) providing the notice required by subsection (b)(4), including a description of the urgent national security interest, and any modifications to the determination made in accordance with subparagraph (B); and

(D) providing notice to the appropriate congressional committees and leadership within 7 calendar days of the covered procurement actions taken under this section.

(d) CONFIDENTIALITY.—The notice required by subsection (b)(2) shall be kept confidential until a determination with respect to a covered procurement action has been made pursuant to subsection (b)(3).

(e) DELEGATION.—The head of an executive agency may not delegate the authority provided in subsection (a) or the responsibility identified in subsection (f) to an official below the level one level below the Deputy Secretary or Principal Deputy Director.

(f) ANNUAL REVIEW OF DETERMINATIONS.—The head of an executive agency shall conduct an annual review of all determinations made by such head under subsection (b) and promptly amend any covered procurement action as appropriate.

(g) REGULATIONS.—The Federal Acquisition Regulatory Council shall prescribe such regulations as may be necessary to carry out this section.

(h) REPORTS REQUIRED.—Not less frequently than annually, the head of each executive agency that exercised the authority provided in subsection (a) or (c) during the preceding 12-month period shall submit to the appropriate congressional committees and leadership a report summarizing the actions taken by the agency under this section during that 12-month period.

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to authorize the head of an executive agency to carry out a covered procurement action based solely on the fact of foreign ownership of a potential procurement source that is otherwise qualified to enter into procurement contracts with the Federal Government.

(j) TERMINATION.—The authority provided under subsection (a) shall terminate on the date that is 5 years after the date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018.

(k) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.—The term “appropriate congressional committees and leadership” means—

(A) the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Select Committee on Intelligence, and the majority and minority leader of the Senate; and

(B) the Committee on Oversight and Government Reform, the Committee on the Judiciary, the Committee on Appropriations, the Committee on Homeland Security, the Committee on Armed Services, the Committee on Energy and Commerce, the Permanent Select Committee on Intelligence, and the Speaker and minority leader of the House of Representatives.

(2) **COVERED ARTICLE.**—The term “covered article” means—

(A) information technology, as defined in section 11101 of title 40, including cloud computing services of all types;

(B) telecommunications equipment or telecommunications service, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(C) the processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program; or

(D) hardware, systems, devices, software, or services that include embedded or incidental information technology.

(3) **COVERED PROCUREMENT.**—The term “covered procurement” means—

(A) a source selection for a covered article involving either a performance specification, as provided in subsection (a)(3)(B) of section 3306 of this title, or an evaluation factor, as provided in subsection (b)(1)(A) of such section, relating to a supply chain risk, or where supply chain risk considerations are included in the agency’s determination of whether a source is a responsible source as defined in section 113 of this title;

(B) the consideration of proposals for and issuance of a task or delivery order for a covered article, as provided in section 4106(d)(3) of this title, where the task or delivery order contract includes a contract clause establishing a requirement relating to a supply chain risk;

(C) any contract action involving a contract for a covered article where the contract includes a clause establishing requirements relating to a supply chain risk; or

(D) any other procurement in a category of procurements determined appropriate by the Federal Acquisition Regulatory Council, with the advice of the Federal Acquisition Security Council.

(4) **COVERED PROCUREMENT ACTION.**—The term “covered procurement action” means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(A) The exclusion of a source that fails to meet qualification requirements established under section 3311 of this title for the purpose of reducing supply chain risk in the acquisition or use of covered articles.

(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(C) The determination that a source is not a responsible source as defined in section 113

of this title based on considerations of supply chain risk.

(D) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor to exclude a particular source from consideration for a subcontract under the contract.

(5) **INFORMATION AND COMMUNICATIONS TECHNOLOGY.**—The term “information and communications technology” means—

(A) information technology, as defined in section 11101 of title 40;

(B) information systems, as defined in section 3502 of title 44; and

(C) telecommunications equipment and telecommunications services, as those terms are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(6) **SUPPLY CHAIN RISK.**—The term “supply chain risk” means the risk that any person may sabotage, maliciously introduce unwanted function, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted on the covered articles.

(7) **EXECUTIVE AGENCY.**—Notwithstanding section 3101(c)(1), this section applies to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 115-390, title II, §203(a), Dec. 21, 2018, 132 Stat. 5189.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the Federal Acquisition Supply Chain Security Act of 2018, referred to in subsec. (j), is the date of enactment of Pub. L. 115-390, which was approved Dec. 21, 2018.

Section 3101(c)(1), referred to in subsec. (k)(7), probably means section 3101(c)(1) of this title, which excepts the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration from applicability of the Procurement procedures and regulations of the Administrator of General Services.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

EFFECTIVE DATE

Pub. L. 115-390, title II, §203(c), Dec. 21, 2018, 132 Stat. 5192, provided that: “The amendments made by this section [enacting this section] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 21, 2018] and shall apply to contracts that are awarded before, on, or after that date.”

Title II of Pub. L. 115-390 effective 90 days after Dec. 21, 2018, see section 205 of Pub. L. 115-390, set out as a note under section 1321 of this title.

§ 4714. Prohibition on criminal history inquiries by contractors prior to conditional offer

(a) LIMITATION ON CRIMINAL HISTORY INQUIRIES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an executive agency—

(A) may not require that an individual or sole proprietor who submits a bid for a contract to disclose criminal history record information regarding that individual or sole proprietor before determining the apparent awardee; and

(B) shall require, as a condition of receiving a Federal contract and receiving payments under such contract that the contractor may not verbally, or through written form, request the disclosure of criminal history record information regarding an applicant for a position related to work under such contract before the contractor extends a conditional offer to the applicant.

(2) OTHERWISE REQUIRED BY LAW.—The prohibition under paragraph (1) does not apply with respect to a contract if consideration of criminal history record information prior to a conditional offer with respect to the position is otherwise required by law.

(3) EXCEPTION FOR CERTAIN POSITIONS.—

(A) IN GENERAL.—The prohibition under paragraph (1) does not apply with respect to—

(i) a contract that requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties; or

(ii) a position that the Administrator of General Services identifies under the regulations issued under subparagraph (B).

(B) REGULATIONS.—

(i) ISSUANCE.—Not later than 16 months after the date of enactment of the Fair Chance to Compete for Jobs Act of 2019, the Administrator of General Services, in consultation with the Secretary of Defense, shall issue regulations identifying additional positions with respect to which the prohibition under paragraph (1) shall not apply, giving due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.

(ii) COMPLIANCE WITH CIVIL RIGHTS LAWS.—The regulations issued under clause (i) shall—

(I) be consistent with, and in no way supersede, restrict, or limit the application of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or other relevant Federal civil rights laws; and

(II) ensure that all hiring activities conducted pursuant to the regulations are conducted in a manner consistent with relevant Federal civil rights laws.

(b) COMPLAINT PROCEDURES.—The Administrator of General Services shall establish and publish procedures under which an applicant for a position with a Federal contractor may submit to the Administrator a complaint, or any

other information, relating to compliance by the contractor with subsection (a)(1)(B).

(c) ACTION FOR VIOLATIONS OF PROHIBITION ON CRIMINAL HISTORY INQUIRIES.—

(1) FIRST VIOLATION.—If the head of an executive agency determines that a contractor has violated subsection (a)(1)(B), such head shall—

(A) notify the contractor;

(B) provide 30 days after such notification for the contractor to appeal the determination; and

(C) issue a written warning to the contractor that includes a description of the violation and the additional remedies that may apply for subsequent violations.

(2) SUBSEQUENT VIOLATION.—If the head of an executive agency determines that a contractor that was subject to paragraph (1) has committed a subsequent violation of subsection (a)(1)(B), such head shall notify the contractor, shall provide 30 days after such notification for the contractor to appeal the determination, and, in consultation with the relevant Federal agencies, may take actions, depending on the severity of the infraction and the contractor's history of violations, including—

(A) providing written guidance to the contractor that the contractor's eligibility for contracts requires compliance with this section;

(B) requiring that the contractor respond within 30 days affirming that the contractor is taking steps to comply with this section; and

(C) suspending payment under the contract for which the applicant was being considered until the contractor demonstrates compliance with this section.

(d) DEFINITIONS.—In this section:

(1) CONDITIONAL OFFER.—The term “conditional offer” means an offer of employment for a position related to work under a contract that is conditioned upon the results of a criminal history inquiry.

(2) CRIMINAL HISTORY RECORD INFORMATION.—The term “criminal history record information” has the meaning given that term in section 9201 of title 5.

(Added Pub. L. 116-92, div. A, title XI, § 1123(a)(1), Dec. 20, 2019, 133 Stat. 1610.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the Fair Chance to Compete for Jobs Act of 2019, referred to in subsec. (a)(3)(B)(i), is the date of enactment of subtitle B (§§ 1121-1124) of title XI of div. A of Pub. L. 116-92, which was approved Dec. 20, 2019.

The Civil Rights Act of 1964, referred to in subsec. (a)(3)(B)(ii)(I), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-92, div. A, title XI, § 1123(a)(3), Dec. 20, 2019, 133 Stat. 1612, provided that: “Section 4714 of title